

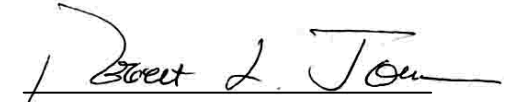


ENTERED

TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

The following constitutes the order of the Court.

Signed October 14, 2005


United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

In Re:

RONALD JAMES HETTLER AND
ROBIN LEE HETTLER,

Debtors

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CASE NO. 02-50465-RLJ-11

WILLIAM DAVID BRENHOLTZ,

Plaintiff

v.

RONALD JAMES HETTLER AND
ROBIN LEE HETTLER,

Defendants

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ADVERSARY NO. 02-5034

MEMORANDUM OPINION AND ORDER

Plaintiff William David Brenholtz moves for summary judgment on his complaint objecting to the dischargeability under section 523(a)(6) of the Bankruptcy Code of the debt owed to

Brenholtz by defendants Ronald James Hettler and Robin Lee Hettler. Brenholtz contends that the elements of section 523(a)(6) are satisfied by a prior state court judgment and that the Hettlers are barred from relitigating such issues under the doctrine of collateral estoppel. The Hettlers contend that the elements of collateral estoppel have not been satisfied and therefore summary judgment is improper.

Summary judgment is proper if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, and other matters presented to the court show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986); *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242, 250 (1986); *Washington v. Armstrong World Indus., Inc.*, 839 F.2d 1121, 1122 (5th Cir. 1988). On a summary judgment motion, the inferences to be drawn from the underlying facts must be viewed in the light most favorable to the party opposing the motion. *Anderson*, 477 U.S. at 255. A factual dispute bars summary judgment when the disputed fact is determinative under governing law of the issue before the court. *Id.* at 250. The movant bears the initial burden of articulating the basis for its motion and identifying evidence which shows that there is no genuine issue of material fact. *Celotex*, 477 U.S. at 322. The respondent may not rest on the mere allegations or denials in its pleadings but must set forth specific facts showing that there is a genuine issue for trial. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986).

The Hettlers filed this chapter 11 case on April 15, 2002. Their filing was prompted in part by the judgment rendered in cause number 97-558,843 in the 364th Judicial District of Lubbock County, Texas, styled William David Brenholtz v. Ronald James Hettler, Robin Lee

Hettler and Cornwall Personal Insurance Agency, Inc. f/d/b/a Hettler Brenholtz Insurance. By the judgment, the Hettlers were found liable to Brenholtz for breach of contract, conversion, fraud, and intentional interference with existing and prospective business relationships. The jury found that those acts were committed with actual malice, which is a predicate finding to an award of exemplary damages under Texas Civil Practice & Remedies Code Chapter 41. The judgment awarded Brenholtz \$884,284.00, plus post-judgment interest at the rate of ten percent per annum, attorney's fees of \$20,000 in the event the judgment was appealed to the Texas Supreme Court, plus \$8,278.79 in additional court costs. All appeals of the judgment have been exhausted and the judgment is final for all purposes.

The Hettlers successfully prosecuted confirmation of their chapter 11 plan which reserved for determination by this Court the question of whether the judgment and the debt resulting therefrom is non-dischargeable under section 523(a)(6) of the Bankruptcy Code. The Hettlers' confirmed chapter 11 plan specifically provides for repayment of Brenholtz's claim. (Full repayment of the judgment amount was conditioned on affirmance of the judgment, which was on appeal at the time of plan confirmation.)

The Court concludes that the Fifth Circuit's opinion in *In re Keaty*, 397 F.3d 264 (5th Cir. 2005) resolves the summary judgment in Brenholtz's favor. In *Keaty*, the Fifth Circuit noted that "malicious" under section 523(a)(6) is defined as a "act done with the actual intent to cause injury." *Id.* at 270, citing *Miller v. J. D. Abrams, Inc. (In re Miller)*, 156 F.3d 598, 606 (5th Cir. 1998). The Court further noted that "willful and malicious" is a unitary concept, holding that an injury is willful and malicious where there is either an objective substantial certainty of harm or a subjective motive to cause harm. *Id.* at 273. The Fifth Circuit noted that in *Miller* it had

specifically rejected the definition of “malicious” to mean an act without just cause or excuse. *Id.* at 270. This, therefore, rejects one of the specific arguments made by the Hettlers in this case. The *Keaty* court’s discussion of the applicability of collateral estoppel is also equally applicable to this case. Without reiterating the *Keaty* court’s discussion of the application of collateral estoppel on an objection to dischargeability under section 523(a)(6), this Court is satisfied that the principles of collateral estoppel under Texas law, as applicable here, are met. The state court’s findings and judgment satisfy the elements of the “willful and malicious injury” requirement. *Id.* at 271. At Question No. 13 of the state court’s judgment, the jury specifically found by clear and convincing evidence that the harm to David Brenholtz resulted from malice of defendants Cornwall Personal Insurance Agency, Inc., Ron Hettler, and Robin Hettler. The court’s charge to the jury defined “malice” as meaning “a specific intent . . . to cause substantial injury to David Brenholtz.” It further defined “clear and convincing evidence” to mean “the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.” The definition presented to the jury satisfies the meaning of “willful and malicious” under section 523(a)(6) of the Bankruptcy Code.

The Court is also satisfied that the “willful and malicious” finding applies to the entirety of the claim. A jury issue for each cause of action was presented, in order, to the jury, together with a submission for the amount of damages associated with each. The malice question and finding follows the jury’s answers to all the causes of action. The malice finding applies to the Hettlers’ conduct that resulted in the liability and damage findings on each cause of action.

It is, therefore, ORDERED that the motion for summary judgment of plaintiff David Brenholtz is granted and discharge of his claim is denied under section 523(a)(6) of the Bankruptcy Code.

End of Memorandum Opinion and Order